

**REMARKS/ARGUMENTS**

By the present amendment, Applicant has amended Claim 12. Claims 1-11 were cancelled by a prior amendment. Claims 12-20 remain pending in the present application. Claim 12 is the only independent claim.

In the recent Office Action the Examiner rejected Claims 12-20 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement, and for being drawn to an insufficiently disclosed invention. Applicant has amended Claim 12 by deleting the term “planar” (all occurrences), and in line 6 of Claim 12 -- generally flat -- has been added before the word “angled”. Applicant submits that support for this amendment is present in the drawing figures of the application as originally filed, and that the rejection of Claims 12-20 under the first paragraph of 35 U.S.C. § 112 is obviated thereby and should be withdrawn.

In the recent Office Action the Examiner rejected Claims 12, 13, 15-17, 19 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Dugan (US 3,855,132) in view of Groth et al. (US 6,932,911). Claim 14 was rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over Dugan (US 3,855,132) in view of Groth et al. (US 6,932,911) and Etani (US 3,946,362). Claim 18 was rejected by the Examiner under 35

U.S.C. § 103(a) as being unpatentable over Dugan (US 3,855,132) in view of Groth et al. (US 6,932,911) and Hunt (US 5,103,601).

Applicant will advance arguments hereinbelow to illustrate the manner in which the presently claimed invention is patentably distinguishable from the cited and applied prior art. Reconsideration of the present application is respectfully requested.

Initially, Applicant respectfully traverses all of the rejections of the Claims based on the U.S. Patent to Groth et al. In this regard, Applicant has submitted herewith a supplemental declaration under 37 C.F.R. § 1.131 by the inventor, Robert W. Jones. The declaration by Mr. Jones includes, *inter alia*, Exhibit B, which is a copy of a yard sign designed for Applicant's company by Judith Barrett Graphics of Alexandria, VA. The yard sign shows a photograph of a model of Applicant's claimed invention. This is the model submitted to Litman Law Offices, Ltd. by Mr. Jones, the inventor of the subject matter described and claimed in the above-identified patent application, on or about March 19, 2003 as part of a disclosure of his invention for the purposes of having a preliminary patentability search conducted (See: DECLARATION UNDER 37 C.F.R. § 1.131, filed September 24, 2005, and Exhibit D attached thereto). The model shown in the photographs of Exhibit B of the present Declaration under 37 C.F.R. § 1.131 is also

the model that was demonstrated and shown to Examiner Joseph W. Drodge at the personal interview conducted June 1, 2005 and attended by Applicant's representatives Warren S. Edmonds and Robert W. Gibson. In the most recent Office Action, the Examiner indicated that the "Affidavit filed on December 19, 2005 under 37 CFR 1.131 is sufficient to overcome the Pourdeyhimi et al. reference (Office Action, p. 3, lines 1-2)." Therefore, the present § 1.131 supplemental Declaration by Mr. Jones, when taken in conjunction with the § 1.131 supplemental declaration by Richard C. Litman, filed on December 19, 2005, and the declaration under 37 C.F.R. § 1.131 filed on September 24, 2005 by inventor Robert W. Jones, clearly establishes that the presently claimed invention was conceived and reduced to practice prior to the effective filing date of the Groth et al. patent, thereby rendering moot the application of the Groth et al. reference as prior art against Applicant's claimed invention. Thus, Applicant respectfully requests reconsideration and withdrawal of the rejections of Claims 12-20 under 35 U.S.C. § 103(a) as being unpatentable over a combination of references, Dugan, Groth et al, Etani and Hunt, wherein the Goth et al. reference is applied as a reference in each of the rejections.

The patent to Dugan discloses an open trough filler 2 made of porous polyurethane foam material, for placement in a rain gutter 1. The filler 2 extends from

the front to the back of the gutter 1, and a space or open passageway 8 is left between the bottom of the filler 2 and the bottom of the gutter 5. This open passageway configuration may be achieved by the formation of a slot in the lower portion of the filler, or by providing spaced supports along the length of the gutter bottom 5 to support the filler and maintain the open passageway. Regarding the material that Dugan employs for his trough filler, he states that, "An example of a suitable porous solid is one with 95 percent void volume with an average of 10 pores per lineal inch (Dugan, col. 2, lines 36-38)." Dugan does not show: 1) a filter cross-section in the form of a truncated right triangle, 2) a generally flat angled side, 3) a lower side having a lower forward edge proximate to the lower edge of the rear side, and 4) the generally flat angled side extending between the front edge of the upper side to the lower forward edge of the lower side. Regarding the patent to Groth et al., it is Applicant's view that the Groth et al. patent should be disqualified as a reference against the claims of Applicant's present application for the reasons set forth above and in view of the evidence presented in the above-noted attached Declaration under 37 C.F.R. § 1.131. There is clearly no teaching or suggestion in the patent to Dugan to modify Dugan to include a filter cross-section in the form of a truncated right triangle with a generally flat angled side extending between the front edge of the upper side to the lower forward edge of the lower side, and a lower side having a lower forward edge proximate to the lower edge of the rear side. It is therefore Applicant's conclusion that the teachings of Dugan fail to establish a *prima facie* case of obviousness, and that the rejection of the

Claims as being unpatentable over Dugan in view of Groth et al. is improper and should be withdrawn.

The Etani patent and the Hunt patent, relied upon by the Examiner in rejecting dependent claims, and the remaining references made of record but not applied against any of the claims have also been carefully reviewed, however, Applicant finds nothing therein which would overcome or supply that which is lacking in the basic combination of the other applied prior art noted above.

The claims in this application have been revised to more particularly define Applicant's unique construction in view of the prior art of record. Reconsideration of the claims in light of the amendments and for the above-noted reasons is respectfully requested.

*Application No.: 10/751,510*  
*Art Unit: 1723*

*Attorney Docket No. 14991.01*  
*Confirmation No. 3347*

For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,



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RWG/dht  
Attachments: Declaration under 35 CFR § 1.131  
Exhibits A, B and C